

REMARKS

Claims 2-21 are pending in the instant application. Claim 1 stands canceled. No new matter is introduced.

Claims 2-21 are provisionally rejected under the judicially created doctrine of double patenting in view of claims 1-25 of US Patent 6,893,857.

Applicants disagree and respectfully traverse. MPEP 804 B. 1. states that

...the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103 are employed when making an obvious-type double patenting analysis. These factual inquiries are summarized as follows: (A) Determine the scope and content of a patent claim relative to a claim in the application at issue; (B) Determine the differences between the scope and content of the patent claim as determined in (A) and the claim in the application at issue; (C) Determine the level of ordinary skill in the pertinent art; and (D) Evaluate any objective indicia of nonobviousness.

Claims 1-25 of US Patent 6,893,857 are directed towards methods for controlling microorganisms in a sugary aqueous process medium of extraction systems in a sugar industry. Applicants submit that the claims of US Patent 6,893,857 are directed towards methods of controlling bacteria in extraction systems in a sugar industry, and provide no teaching or suggestion regarding incorporation of yeast or fermentation process mediums. No mention regarding yeast appears in the '857 Patent claims.

In contrast, the instant claims teach an improved process for controlling micro-organisms in an aqueous process medium, which includes the step of combining the aqueous alkaline hop acid solution with yeast to form a yeast hop acid solution, and introducing the yeast hop acid solution into the process medium. The process mediums of the '857 Patent and Applicants' claimed subject matter are distinguishable.

Applicants submit that the claims of US Patent 6,893,857 do not provide any motivation to one of ordinary skill in the art, to combine an aqueous alkaline hop acid solution with yeast to

form a yeast hop acid solution, and to introduce the yeast hop acid solution into the process medium. The '857 claims fail to recite yeast.

Applicants therefore submit that the '857 Patent claims do not render Applicants' claimed subject matter obvious. Withdrawal of the rejection is thus respectfully requested.

Claims 2-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22-40 of co-pending Application No. 10/361,976. Applicants acknowledge that a similar provisional obviousness-type double patenting rejection over the instant claims was issued in an Office Action for co-pending Application No. 10/361,976. Applicants have addressed all other rejections and therefore, pursuant to MPEP 1490(V)(D), as the provisional obviousness type double patenting rejection is the only rejection remaining, and application 10/361,976 is still a pending application, Applicants request withdrawal of this rejection and allowance of this application.

In view of the above remarks, Applicants believe the pending application is in condition for allowance. Should any of the claims not be found to be allowable, the Examiner is requested to telephone Applicants' undersigned representative at the number below. Applicants thank the Examiner in advance for this courtesy.

The Director is hereby authorized to charge or credit any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 51035-61755.

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Respectfully submitted,

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